



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
DINWIDDIE COUNTY SCHOOL BOARD
FOR THE
Dinwiddie Middle School
PC No. 2010-4474**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34.20, between the State Water Control Board and the Dinwiddie County School Board, for the purpose of resolving certain violations of the State Water Control Law.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 *et seq.*)
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.
7. "Facility" means the Dinwiddie Middle School, which is located at 12318 Boydton Plank Road, Dinwiddie, Virginia. The Facility is a development or installation within the Commonwealth that deals in, stores or handles oil and includes a pipeline.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code § 62.1-44.34:14.
10. "Operator" means any person who owns, operates, charters by demise, rents, or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
13. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
14. "School Board" means the Dinwiddie County School Board, a body corporate under Va. Code § 22.1-71 that is charged with the supervision of schools within the Dinwiddie County. The School Board is a "person" within the meaning of Va. Code § 62.1-44.34:14.
15. "Site" means the facility, land, road, storm drain(s) and surface water(s) adversely affected by the oil discharge.
16. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses Discharge of Oil into Waters.

17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.

SECTION C: Findings of Fact and Conclusions of Law

1. The School Board is an Operator of a 10,000 gallon AST which is located at the Facility. The AST contains oil, in the form of # 2 heating oil, which is used for heating purposes for the Facility.
2. On March 29, 2010, the School Board contacted the Dinwiddie Emergency Services and the Department regarding the discharge of the oil. The oil flowed beneath the boiler room door, into a floor drain, then into an underground storm water collection system, and discharged into an unnamed tributary to a 4-acre pond, which discharges into Little Cattail Creek, a state water, resulting in a sheen. The Dinwiddie Emergency Services immediately began containment and clean-up operations by placing absorbent pads in the drainage ditch area and a boom across the pond's outfall to prevent further downgradient migration of the oil. The School Board personnel immediately worked to replace the failed L-shaped boiler connection which caused the release. The School Board also hired a private contractor to perform containment and cleanup.
3. On March 30, 2010, the contractor for the School Board mobilized to the Site and installed additional booms and absorbent pads in areas where the oil and oil sheen had accumulated; and subcontracted disposal of the petroleum contaminated water, oil, oil soaked booms, and absorbent pads.
4. On March 31, 2010, DEQ staff conducted the initial investigation of the discharge of oil from the Facility to state waters.
5. On April 7, 2010, the contractor for the School Board inspected the area below the pond to ~ 1000 linear feet and observed no visual evidence of oil impact to the surface water bodies below the pond. On April 13, 2010, the contractor collected one water sample from each of the two supply wells at the Facility for testing. Test results revealed no parameters were above the quantification limit.
6. Va. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands, or storm drain systems that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

7. On April 26, 2010, the Department issued Notice of Violation No. 10-04-PRO-501 to the School Board for a discharge of oil to state waters that resulted in a sheen upon and discoloration of state waters.
8. On May 15, 2010, the contractor installed two monitoring wells along the 4-acre pond embankment to determine if oil had adsorbed in the soil at the pond water/soil embankment interface. No accumulated oil was recorded on the absorbent wicks placed in the monitoring wells. Cleanup and removal activities continued through June 4, 2010.
9. On June 10, 2010, DEQ staff received the "Initial Abatement Measures Report/Site Characterization Report" submitted by the School Board's contractor, which described the cause, extent and impact of the oil discharge from the Facility, the remediation activities, and closure of the Site by June 15, 2010. The report stated that approximately 200 - 800 gallons of oil had discharged from the Facility.
10. The School Board has taken steps to prevent an occurrence of a similar unpermitted discharge at the Facility, by: replacing fuel lines; installing two mechanical safety devices on each fuel supply line; and installing an electronic device in the drain pans that will send a signal to cut off the machines in the event of another leak; and provide an audible alarm for up to 36 hours.
11. DEQ approved closure of the site on September 21, 2010.
12. Based on the results of the March 29, 2010 reported oil discharge, the March 31, 2010 DEQ staff investigation, and the June 10, 2010 Initial Abatement Measures Report submitted by the contractor, the Board concludes that the School Board has violated the Va. Code § 62.1-44.34:18, by discharging oil, in the form of diesel fuel, into state waters causing a sheen, and discoloration of state waters as described in paragraphs C(2) through C(6), above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the School Board, and the School Board agrees to:

1. Pay a civil charge of **\$4,750** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The School Board shall include its Federal Employer Identification Number (FEIN) with the civil payments **and** shall indicate that the payment of the civil charge is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund VPSTF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the School Board for good cause shown by the School Board, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the School Board admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The School Board consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The School Board declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the School Board to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The School Board shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The School Board shall show

that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The School Board shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

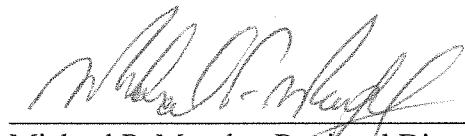
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the School Board intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the School Board. Nevertheless, the School Board agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after the School Board has completed all of the requirements of the Order.
 - b. The School Board petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the School Board.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the School Board from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the School Board and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the School Board certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the School Board to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the School Board.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the School Board voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 11th day of APRIL, 2012.



Michael P. Murphy, Regional Director
Department of Environmental Quality

The Dinwiddie County School Board voluntarily agrees to the issuance of this Order.

Date: 1/18/12 By: W. David Clark, Superintendent
(Person) (Title)
School Board

Commonwealth of Virginia

City/County of Dinwiddie

The foregoing document was signed and acknowledged before me this 18th day of January, 2012, by William David Clark who is Superintendent of the Dinwiddie County School Board.

Bonnie Gholson
Notary Public

293584
Registration No.

My commission expires: 10/31/2012

Notary seal:

